

IN THE MATTER OF  
MAX R. WEINBERG, D.P.M.

SUPERCEDING  
AGREED ORDER

LICENSE No. 0859

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BEFORE THE TEXAS STATE  
BOARD OF PODIATRIC  
MEDICAL EXAMINERS

SITTING IN AUSTIN,

TRAVIS COUNTY, TEXAS

AGREED ORDER

BE IT REMEMBERED that on the date approved and entered below came to be considered the allegations against Max R. Weinberg, DPM. By letters dated August 15, 2004 and January 31, 2005, the staff of the Texas State Board of Podiatric Medical Examiners (the "Board") gave preliminary notice to Dr. Weinberg of its intent to investigate complaints, concerns or reports filed against him. Dr. Weinberg was duly notified of the allegations against him. Dr. Weinberg has cooperated with the staff of the Board and was given the opportunity to present information in rebuttal.

By his signature on this Superceding Agreed Order (Order), and upon acceptance and entry of this Order by the Board, Dr. Weinberg does hereby waive his right to an administrative hearing before the State Office of Administrative Hearings, and judicial review of this Order. Dr. Weinberg understands that he has the option, before signing this Order, to participate in a contested case hearing under the *Administrative Procedure Act*.

The Board and Dr. Weinberg, in order to avoid the expense, delay and uncertainty of a hearing, have agreed to the entry of an Order dispensing with the need for further action in this matter. Dr. Weinberg agrees to this Order for the purpose of resolving this proceeding. The Board makes the following Findings of Fact and Conclusions of Law and enters this Order:

FINDINGS OF FACT

1. Dr. Weinberg is licensed as a podiatric physician in the State of Texas (License Number 0859) to practice podiatric medicine and is therefore subject to the jurisdiction of the Board, the Podiatric Medical Practice Act of Texas and the Rules of the Board.
2. A complaint was filed against Dr. Weinberg, and he was provided with notice of the complaint and with an opportunity to respond to the complaints and to show compliance with the law. The complaint alleged Dr. Weinberg committed actions involving drug diversion and prescription fraud, for which he was arrested on May 6, 2004 in Paris, TX, and was the subject of Agreed Board Order 04-017 approved and entered (executed) on August 9, 2004.
3. On January 19, 2005, Dr. Weinberg pled nolo contendere to a five (5) year probation and deferred adjudication in Lamar County, TX for Fraud/Delivery of a Controlled Substance Prescription, Schedule III, IV, V, a third degree felony, Cause No. 20258; and Commercial Matters Registrant/Dispenser, state jail felony, Cause No. 20259.

4. Dr. Weinberg, as a podiatrist licensed in the State of Texas, must comply with the provisions of the Podiatric Medical Practice Act of Texas, the Board Rules and Board Orders.

### CONCLUSIONS OF LAW

1. Dr. Weinberg is required to follow the provisions of the Podiatric Medical Practice Act, Texas Occupations Code, §202.001, et. seq., and the associated Rules of the Board, 22 Tex. Administrative Code § 371.1, et. seq..
2. Texas Occupations Code, §202.253(a)(5) provides that, "the board may refuse to issue a license to practice podiatry to a person, for directly or indirectly violating or attempting to violate this chapter or a rule adopted under this chapter as a principal, accessory, or accomplice."
3. Texas Occupations Code, §202.501(a) provides that, "the Board shall revoke or suspend a license; place on probation a person whose license has been suspended, or reprimand a license holder for violating the law regulating the practice of podiatry or a rule adopted by the board."
4. Texas Occupations Code, §202.5015 provides that a license holder who engages in conduct described by Section 202.253 violates this chapter.
5. 22 Texas Administrative Code, §376.1(a)(1) provides that, "any podiatric physician who violates any provision of these rules, or any provision of the Act shall be at the discretion of the Board subject to the following penalties: cancellation, suspension, revocation, or probated cancellation, revocation, or suspension of the license to practice podiatric medicine."
6. The Findings Of Fact numbers 1 through 4 establish that Dr. Weinberg violated: Texas Occupations Code, §202.253(a)(16) in that he failed: to practice podiatry in an acceptable manner consistent with public health and welfare.  
22 Texas Administrative Code §375.2(a) provides: "The health and safety of patients shall be the first consideration of the podiatric physician. The principal objective of the podiatric medical profession is to render service to humanity. A podiatric physician shall continually strive to improve his medical knowledge and skill for the benefit of his patients and colleagues. The podiatric physician shall administer to patients in a professional manner and to the best of his ability. Secrets and personal information entrusted to him shall be held inviolate unless disclosure is necessary to protect the welfare of the individual or the community. A podiatric physician shall be temperate in all things in recognition that his knowledge and skill are essential to public health, welfare, and human life."
7. The Findings Of Fact numbers 1 through 4 establish that Dr. Weinberg violated: Texas Occupations Code, §202.253(a)(5) in that he: directly or indirectly violated or attempted to violate this chapter or a rule adopted under this chapter as a principal, accessory, or accomplice.

### ORDER

1. Dr. Weinberg's license is placed on a temporary voluntary suspension, retroactive to August 9, 2004, until the provisions of the criminal probation are met in full (see terms of probation attached). In the event the 5-year period of Dr. Weinberg's criminal probation terms are reduced, this Order placing the

temporary voluntary suspension is to be commensurate with the time period imposed or reduced by Lamar County, TX.

2. At the conclusion of the criminal probation period, Dr. Weinberg's license is placed on an additional 2 (two) year administrative probation, conditioned upon the successful completion of the provisions set forth below.

**During the Temporary Voluntary Suspension period:**

3. Dr. Weinberg's podiatric practice is to remain closed for the purposes of receiving, diagnosing, treating, or consulting with patients, and Dr. Weinberg may not participate for income in any professional activity that is directly related to the diagnosis or treatment of a patient. Dr. Weinberg may refer his patients to another practitioner for treatment or consultation during the term of the temporary voluntary suspension, but Dr. Weinberg shall not derive any income from such referrals.
4. Dr. Weinberg may keep his office open for the purposes of arranging referrals, handling mail, processing accounts, billing, and insurance matters, and other similar matters if not directly related to the diagnosis and treatment of patients. Dr. Weinberg shall not offer and shall not accept to consult with, diagnose or treat a patient.
5. If Dr. Weinberg shares office space with a podiatrist, the other podiatrist shall be allowed to continue his/her practice normally, but Dr. Weinberg shall not consult regarding the diagnosis or treatment of patients and shall not share income with the other practitioner, including any income derived in any way from the diagnosis or treatment of patients.

**Conditions precedent to conditional 2-year Administrative Probation:**

6. At the end of the temporary voluntary suspension, Dr. Weinberg will present documentation to the Board indicating the successful completion of his criminal probation terms through the Lamar County Community Supervision and Corrections Department.
7. Dr. Weinberg, at his cost, shall undergo a psychiatric evaluation. The evaluation shall be submitted to the Board for review. The psychiatric evaluation will not be performed by a friend or colleague of Dr. Weinberg. If the psychiatric report does not state that Dr. Weinberg is a danger to himself or others, then the conditions of the 2-year Administrative Probation set forth below are effective.
8. If the psychiatric report states that Dr. Weinberg is a danger to himself or others, then an informal consent hearing will be convened, within 30 days after receipt of the report, to address the matter of the 2-year Administrative Probation set forth below and Dr. Weinberg's practice of podiatric medicine. Until such time the hearing is convened and a decision rendered by the Board's Investigative Committee, Dr. Weinberg shall not perform acts incident to the practice of

podiatric medicine, upon written notification of the same from the Board to Dr. Weinberg.

**Regarding the conditional 2-year Administrative Probation:**

9. Upon successful completion of all the conditions precedent set forth above, the administrative probation is imposed, subject to the conditions below.
10. Dr. Weinberg shall permit a Board representative or staff member to periodically enter his place of business and/or the facility at which he previously maintained an office, announced or unannounced, during the hours of 8:00 a.m. to 5:00 p.m. on any weekday that is not a federal holiday to ensure compliance with this Order, and to ensure proper medical records are maintained, including applicable prescription records.
11. Dr. Weinberg shall pay a fine of \$1,000.00 (One Thousand Dollars and no/100). The fine of \$1,000.00 (One Thousand Dollars and no/100) is conditionally waived. Failure to maintain proper medical records, and applicable prescription records, will result in the automatic assessment of the fine, which shall be immediately fully due and payable.
12. Dr. Weinberg shall complete an additional four (4) hours of Continuing Medical Education in addition to the hours already required by law. The four (4) hours shall consist of ethics, medical record keeping or practice/risk management courses; offered by the Texas Podiatric Medical Association or the Texas Medical Association, or other Podiatric Medical Associations.
13. Entry of this **Superceding Agreed Order** shall finally resolve any and all pending matters or investigations before the Board regarding Max Weinberg, DPM.
14. The terms of this **Superceding Agreed Order**, if accepted by the Board, become effective upon approval of the Board, retroactive to August 9, 2004.
15. If Dr. Weinberg fully complies with the terms of the **Superceding Agreed Order**, the Board agrees not to bring any further disciplinary action regarding the facts that are the subject of this Order or any other complaint against Dr. Weinberg currently pending with the Board.

**GENERAL PROVISIONS**

1. Effective Date. This **Superceding Agreed Order** shall take effect and become binding upon the approval by the Board, retroactive to August 9, 2004.
2. No Waiver. No waiver of any of the terms of this **Superceding Agreed Order** shall be valid unless in writing. No waiver of default of any terms of the **Superceding**

**Agreed Order** shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

3. Governing Law. This **Superceding Agreed Order** is entered into pursuant to and shall be construed to be in accordance with the laws of the State of Texas including:

*Tex. Occup. Code Ann., §202.001 et seq., the Podiatric Medical Practice Act. and the Tex. Gov't Code Ann., §2001.001 et seq., the Administrative Procedure Act.*

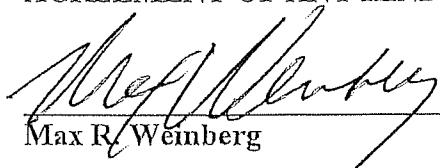
4. Acknowledgment of Entire Agreement. Dr. Weinberg acknowledges that he has carefully read this instrument, including all documents or exhibits, if any, that are referred to, that this instrument expresses the entire agreement between the parties concerning the subjects it purports to cover, and Dr. Weinberg has executed this instrument freely and of his own accord.
5. Notice. Any notice to be given under the terms of this **Superceding Agreed Order** by either party to this order shall be in writing and shall be delivered by personal delivery or certified mail, return receipt requested, to the following addresses:

Max R. Weinberg, DPM  
C/O Joseph F. Coniglio, Attorney  
Strasburger Attorneys At Law  
901 Main Street; Suite 4300  
Dallas, TX 75202

Texas State Board of Podiatric Medical Examiners  
P.O. Box 12216  
Austin, TX 78711-2216

6. Upon approval of this **Superceding Agreed Order** by the Board, the Presiding Officer and the Executive Director are authorized to sign the Order on the Board's behalf.

I, MAX R. WEINBERG, DPM, HAVE READ AND UNDERSTAND THE FOREGOING ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE THE RIGHT TO A HEARING BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AND TO JUDICIAL REVIEW OF THE SUPERCEDING AGREED ORDER. I SIGN IT VOLUNTARILY. I UNDERSTAND THE AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, ORAL, WRITTEN OR OTHERWISE.

  
Max R. Weinberg

6/23/2005  
Date

IN THE STATE OF TEXAS

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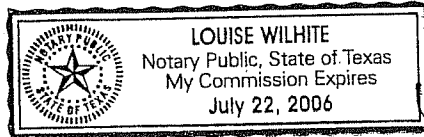
COUNTY OF Lamar

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BEFORE ME, on this day personally appeared Max R. Weinberg known to me, who first, being duly sworn, signed the foregoing **Superceding Agreed Order** in my presence.

SIGNED on this the 23 day of June, 2005.

Louise Wilhite  
(Printed Name of Notary Public)



Louise Wilhite  
Notary Public, in and for the State of Texas

APPROVED AND ENTERED by the Texas State Board of Podiatric Medical Examiners on this the 8th day of August, 2005, after a Board vote.

Bradford Glass, D.P.M.  
Bradford Glass, D.P.M.  
Board President

Jim Zukowski, Ed.D.  
Jim Zukowski, Ed.D.  
Executive Director